



July 16, 2004

Dear Member of Congress:

On behalf of People For the American Way and its 675,000 members and other supporters nationwide, we write in strong opposition to H.R. 3313, the "Marriage Protection Act of 2003." As an organization dedicated to protecting and broadening the civil rights and civil liberties of all Americans, we urge you to vote no on H.R. 3313. The Hostettler bill is a direct attack on the civil rights of gay and lesbian Americans and it would set a dangerous precedent jeopardizing the rights of all Americans to challenge unconstitutional or unlawful government action in federal court.

The "Marriage Protection Act" would bar federal courts from hearing challenges to the "full faith and credit" provision of the "Defense of Marriage Act" (DOMA) (28 U.S.C. § 1738c). The result would be, for the first time in U.S. history, to bar an entire class of U.S. citizens from the federal courts. Such a harshly punitive and blatantly discriminatory measure should be rejected as a matter of policy. And given the lack of any legitimate governmental purpose to shutting the courthouse doors to gay and lesbian families, H.R. 3313 also patently violates the equal protection clause of the 14th amendment.

However, the threat posed by the Hostettler bill goes far beyond its direct discriminatory effects on same sex couples. It also threatens to disrupt the framework of checks and balances on governmental power embodied in the U.S. Constitution through the separation of powers. H.R. 3313 would set the precedent for Congress to remove legislation from constitutional review by the judicial branch. For all practical purposes, Congress could become the sole arbiter of constitutionality on any subject within its powers – or indeed outside its powers since it could legislate away any challenge to Congressional interpretation of its own authority.

Apart from being unwise as a matter of policy, this appears to be an unconstitutional overreach of Congress' power under article III regarding the federal judiciary, particularly in light of the 5th Amendment's due process clause and the 14th amendment's equal protection clause. Further, litigation over the meaning of article III, a necessary part of the inevitable court challenge to H.R. 3313, could in of itself result in a constitutional crisis deeply damaging to the separation of powers. This bill should not see the light of day.

The independent judiciary is a popular hobgoblin to some in Congress. The Hostettler bill is a trial run at their proposed remedy: an end to meaningful judicial review. But the separation of powers exists to safeguard the rights and liberties of individual Americans against overreach by their government. While the target of H.R. 3313 is the federal courts, it is the

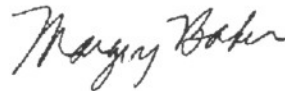
American people – who would lose a critical avenue to redress governmental wrongs – who would feel the impact. Today it is the right of gay and lesbian Americans to equality under law that is threatened, but stripping courts of jurisdiction is a tactic that can be turned against any of our fundamental rights and freedoms.

In short, “the Marriage Protection Act” is discriminatory, unconstitutional, and aggrandizes Congress at citizens’ expense. We urge you to vote to protect our fundamental rights and oppose H.R. 3313.

Sincerely,



Ralph G. Neas
President
People For the American Way



Marge Baker
Director, Public Policy
People For the American Way